



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2017-0786]

RIN 1625-AA00

Safety Zone; Tombigbee River, Demopolis, AL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all navigable waters of the Tombigbee River from mile marker (MM) 215.5 to MM 216.5, near Demopolis, AL. This action is necessary to protect persons and property on navigable waters during a fireworks display taking place on or over the waterway. Entry into or transiting in this zone is prohibited to all vessels, mariners, and persons unless specifically authorized by the Captain of the Port Sector Mobile (COTP) or a designated representative.

DATES: This rule is effective from 8 p.m. through 10 p.m. on September 16, 2017.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2017-0786 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LT Kyle D. Berry, Sector Mobile, Waterways Management Division, U.S.

Coast Guard; telephone 251-441-5940, e-mail Kyle.D.Berry@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Acronyms

CFR	Code of Federal Regulations
COTP	Captain of the Port Sector Mobile
FR	<i>Federal Register</i>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. It is impracticable to publish an NPRM because we must establish this safety zone by September 16, 2017 and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the *Federal Register*. Delaying the effective date to provide a full 30 days’ notice is contrary to public interest because immediate action is needed to protect persons and vessels from safety hazards associated with the fireworks display over this navigable waterway.

III. Legal Authority and Need for Rule

The legal basis and authorities for this rule are found in 33 U.S.C. 1231. The Marengo County Historical Society plans to conduct a fireworks display launched from shore on the Tombigbee River located near mile marker (MM) 216.0, in Demopolis, AL on September 16, 2017. Therefore, the Coast Guard has determined that a safety zone is needed to protect the public, mariners, and vessels from the potential hazards associated with a barge-based fireworks display on and over the waterway.

IV. Discussion of the Rule

The Coast Guard is establishing a temporary safety zone encompassing all waters extending the entire width of the Tombigbee River from MM 215.5 to MM 216.5, near Demopolis, AL from 8 p.m. through 10 p.m. on September 16, 2017. The location and duration of this safety zone is intended to protect persons and vessels during the fireworks display taking place over this navigable waterway. No person or vessel will be permitted to enter or transit within the safety zone, unless specifically authorized by the Captain of the Port Sector Mobile (COTP) or a designated representative. The COTP may be contacted by telephone at 251-441-5976.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to

control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory determination is based on the duration, location, and size of the safety zone. This safety zone will restrict vessel traffic from entering or transiting in a one mile portion of the Tombigbee River, in Demopolis, AL for a duration of two hours. Additionally, notifications to the marine community will be made through BNMs. These notifications will allow the public to plan operations around the affected area and vessels may request permission from the COTP to transit through the safety zone.

B. Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601-612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule.

If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under E.O. 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have

a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone on a one mile section of the Tombigbee River during a firework display and is not expected to result in any significant adverse environmental impact as described in NEPA. This rule is categorically excluded from further review under paragraph (34)(g) of Figure 2-1 of the Commandant Instruction. A Record of Environmental Consideration supporting this determination is available in the docket

where indicated under ADDRESSES.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1; 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T08-0786 to read as follows:

§ 165.T08-0786 Safety Zone; Tombigbee River, Demopolis, AL

(a) Location. The following area is a safety zone: all navigable waters of the Tombigbee River from mile marker (MM) 215.5 to MM 216.5 near Demopolis, AL.

(b) Enforcement period. This section will be enforced from 8 p.m. through 10 p.m. on September 16, 2017.

(c) Regulations. (1) The general regulations contained in § 165.23 as well as the

regulations in this section apply to the regulated area.

(2) Entry into this zone is prohibited unless authorized by the Captain of the Port Sector Mobile (COTP) or a designated representative.

(3) Persons or vessels seeking to enter into or transit through the zone must request permission from the COTP or a designated representative. They may be contacted on VHF-FM channels 16 or by telephone at 251-441-5976.

(4) If permission is granted, all persons and vessels must comply with the instructions of the COTP or designated representative.

(d) Informational broadcasts. The COTP or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the safety zone.

Dated: August 24, 2017

M.R. MCLELLAN,
Captain, U. S. Coast Guard,
Captain of the Port Mobile.